

IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI

CP/1000/IB/2018

*Under Section 9 r/w Rule 6 of the IBC, 2016*

**In the matter of M/s. Info-Drive Software Limited**

**Mr. Bhaaskaran Rangarajan**

**---Operational Creditor**

V/s

**M/s. Info-Drive Software Limited**

**---Corporate Debtor**

**Order delivered on: 15.10.2019**

**Coram:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Operational Creditor: *Shri. R. Sathish Kumar, Advocate*

For the Corporate Debtor : **Non-Present** on the dater of hearting

**ORDER**

**Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**Heard and dictated in Open Court on: 10.10.2019**

It is a Company Petition filed u/s 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by the Operational Creditor namely, Mr. *Bhaaskaran Rangarajan* for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor against the Corporate Debtor namely, *M/s. Info-Drive Software*

*Limited* on the ground it has defaulted in paying ₹50,00,000 for consultancy services said to have been provided by the Operational Creditor to Corporate Debtor.

2. Wherein this Bench initially dismissed the claim of the Applicant stating that since the Applicant failed to place clear documentation, indicating the agreement between the parties to provide services, proof reflecting what has been executed by the Applicant and proof reflecting the Government remained waiting for the services of the Corporate Debtor from the year 2014 to 2018 i. e., for four years.

3. On the petition being dismissed over the aforesaid grounds, when this Applicant went for an appeal, the Hon'ble NCLAT reversed the dismissal order of this Bench with a direction to this Bench by holding that it is not open to this Adjudicating Authority to reject the application preferred by this Applicant.

4. In the back drop of this historical development, we hereby passed these orders by reiterating the facts earlier recorded, which are as follows:

*On looking at the documents filed by the Operational Creditor to establish that this Operational Creditor was engaged to provide consultancy services and project implementation to the Corporate Debtor, this Operational Creditor has shown a letter dated 26.11.2014 under the caption of "Letter of Engagement". When we have gone through the same, it is apparent that it is only an offer made by the Corporate Debtor to this Operational Creditor to provide services of consultancy and project implementation related to the tender the Corporate Debtor received from the Department of Cooperation, Government of Tamil Nadu to implement a web based solution at 110 Employees Thrift Cooperative Societies in the Chennai Region.*

*By reading this para, it appears that the object of this offer letter is to provide web based solutions to the Department of Cooperation, Government of Tamil Nadu. Soon after referring this document to show that this Operational Creditor was engaged by the Corporate Debtor to arrange this web based solutions to the Department of Cooperation, Government of Tamil Nadu, the Operational Creditor counsel has taken us to another document i.e. Memorandum of Understanding ("MOU") dated 22.01.2018 entered into between the Corporate Debtor and a company called "M/s. Sesame Software Solutions Pvt. Ltd.,".*

*If we go by the argument of this Operational Creditor counsel believing that this Operational Creditor was engaged to provide*

*consultancy services, there should have been an acceptance letter from the Corporate Debtor side for the offer made by them, but no such letter was produced by this Operational Creditor counsel before this Bench to show that the debtor accepted such offer given by the Corporate Debtor, the Operational Creditor counsel relied upon this MOU entered into with third party called "M/s. Sesame Software Solutions Pvt. Ltd." on 22.01.2018.*

*Whenever any Government asked to float a bid to provide services to the Government, general presumption is that Government would call for bids expecting that work would be provided by successful bidder simultaneously. But on the contra, here it is evident that the offer letter issued in the year 2014 whereas the MoU was entered on 22.01.2018 wherein this Operational Creditor is not a party to the proceedings.*

*Thereafter, the Operational Creditor counsel has taken us to an invoice dated 19.03.2018 raising invoice for ₹50,00,000 against the Corporate Debtor wherein GST/TDS deduction has not been mentioned. It is not a Tax Invoice.*

*Thereafter, the creditor counsel has taken us to a letter dated 04.05.2018 appeared to have been written by the debtor to this Creditor saying that they would like to request the Creditor to allow till 20.05.2018 to settle the invoice amount. This invoice was for the first time raised on 19.03.2018 basing on an offer letter dated 26.11.2014. Then, within no time the creditor served Section 8 notice on 24.04.2018*

*along with invoice dated 19.03.2018. This invoice is dated far after three years from the date of so-called offer letter dated 26.11.2014. Today none present on behalf of the Corporate Debtor.*

*On perusal of these documents and references made by this Creditor counsel, it is clear that the documents this counsel referring to are not compatible to each other, offer letter dated 26.11.2014, MoU in the year 2018, no sooner raised invoices, section 8 notice, then section 9 petition before this Bench. As to the letter dated 26.11.2014, even if it is assumed as a Letter of Engagement, since it is the service to be provided to the Department of Cooperation, Government of Tamil Nadu, it could not be blindly assumed as Government would remain silent for more than three years until this Operational Creditor engaged somebody to provide such services basing on MoU dated 22.01.2018 alleged to have been entered into with the Debtor. And for there being no definite agreement between these parties, we are unable to believe that this case is made out u/s 9 of the Code. This kind of circuitous approach for proving a case is not contemplated under the Code.*

5. The holding and direction given by the Honourable NCLAT is as follows:

*“In the Form-5 filed by the Appellant in part-IV clause 6 Appellants relied on 8 documents to show how operational debt became due and in clause (8) the Appellant has given details of the records – 11 enclosures to show existence of debt and record shows default. The Adjudicating Authority has failed to consider the*

*same though even when "Corporate Debtor" has claim when notice u/s 8(1) was issued.*

*In spite of service of notice, the "Corporate Debtor" has not appeared nor disputed the aforesaid facts and records, in Appeal.*

*Learned counsel for the Appellant has brought to our notice that the "Corporate Debtor" on the other hand accepted the amount and sought for some time to pay the amount and failed to pay the amount.*

*In the facts and circumstances, it was not open to the Adjudicating Authority to reject the application preferred by the Appellant u/s 9 of the "I&B" Code. We, accordingly set aside the impugned order and remit the case to the Adjudicating Authority ("National Company Law Tribunal"), Divisional Bench, Chennai and direct it to admit the application u/s 9 preferred by the Appellant after notice to the Respondent (so as to enable the Respondent to pay the amount before the order of admission).*

*The appeal is **allowed** with aforesaid observation. No costs."*

6. In view of the order passed by the Hon'ble NCLAT, as the Registry sent notice to the Corporate Debtor as per the direction given by Hon'ble NCLAT. We hereby admit this Company Petition by appointing Mr. Nurani Subramanian Suryanarayanan Insolvency

Resolution Professional (IRP) looking at the consent given by the Professional. This Operational Creditor is further directed to pay remuneration of the IRP, public announcement expenses and other expenses, if any, until constitution of CoC. Accordingly, this CP/1000/IB/2018 is hereby **admitted** with the following directions:

- (I) That Moratorium is hereby declared prohibiting all of the following actions, namely,
  - (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other Authority;
  - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from **10.10.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints **Mr. Nurani Subramanian Suryanarayanan** as Interim Resolution Professional having (Reg. No. IBBI/IPA-002/IP-N00379/2017-2018/11122), Flat V-II, Silver Palm Apts, 340/1, Bajanai Koil Street, Padi, Chennai-600050, E-Mail: [suri\\_nar@hotmail.com](mailto:suri_nar@hotmail.com), Mobile No: 9789098947 with his consent to carry the functions as mentioned under The Insolvency & Bankruptcy Code.

7. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

-Sd-  
**(S. VIJAYARAGHAVAN)**  
**Member (Technical)**

-Sd-  
**(B. S.V. PRAKASH KUMAR)**  
**Member (Judicial)**

SR/TJS